

## **BRECKLAND COUNCIL**

**Report of:** Elizabeth Gould, Executive Member for Planning, Housing & Public Protection

**To:** Portfolio Holder Briefing: 16 September 2013  
Cabinet: 17 September 2013  
Council: 3 October 2013  
General Purposes (via Urgent Powers) 16 October 2013

**Author:** Rowland Wilson, Licensing Manager

**Subject:** Scrap Metal Dealers Act 2013

**Purpose:** To approve the delegated powers in respect of the functions under The Scrap Metal Act 2013. To seek approval of members for the proposed fees to be charged.

### **Recommendation(s):**

- a) Authorise the amendments to the Breckland Council Constitution to exercise its functions in accordance with The Scrap Metal Dealers Act 2013.
- b) Approve the fees set out within the report in respect of scrap metal dealer licences.

## **1.0 Background**

- 1.1 The Scrap Metal Dealers Act 2013 (“the Act”) received Royal Assent on 28<sup>th</sup> February 2013, the Commencement Order was made on 6<sup>th</sup> August 2013 and we still await the issue of further regulations and guidance by the Home Office.
- 1.2 The Act repeals the Scrap Metal Dealers Act 1964 (and linked legislation) and Part 1 of Vehicles (Crime) Act 2001, creating a revised regulatory regime for the scrap metal recycling and vehicle dismantling industries. The Act maintains local authorities as the principal regulator but gives them the power to better regulate these industries by allowing them to refuse to grant a licence to ‘unsuitable’ applicants and a power to revoke licences if the dealer becomes ‘unsuitable’.
- 1.3 The Act provides that an application for a licence must be accompanied by a fee. The fee will be set locally by each local authority on a cost recovery basis, but local authorities will have a duty to have regard to guidance issued by the Secretary of State, which outlines the issues that should be considered by them when setting the fee and what activities the fee can cover. This fee will be an essential component of the new regime as it will provide local authorities with the funding they need to administer the regime and to ensure compliance.

1.4 The Act incorporates the separate regulatory scheme for motor salvage operators under the Vehicles (Crime) Act 2001 into this new regime. The Act also revises the definition of 'scrap metal dealer' and 'scrap metal' to ensure they reflect the twenty-first century scrap metal industry.

## **1.5 Summary of the provisions of the Act**

1.6 The Act defines a "scrap metal dealer" as a person 'who is for the time being carrying on business as a scrap metal dealer, whether or not authorised by a licence'.

1.7 It further states that "scrap metal" includes:

- (a) Any old, waste or discarded metal or metallic material, and
- (b) Any product, article or assembly which is made from or contains metal and is broken, worn out or regarded by its last holder as having reached the end of its useful life.

1.8 Section 1 of the Act requires that a scrap metal dealer obtains a licence in order to carry on business as a scrap metal dealer. It will be an offence to carry on a business as a scrap metal dealer in breach of the requirement to hold a licence. This offence is punishable on summary conviction with a fine not exceeding level 5 on the standard scale (£5,000).

1.9 Section 2 provides further detail in respect of the licence, including that there will be two types of licence, one for a site and the other for a mobile collector (for those carrying on business otherwise than at a site).

2.0 A site licence will be issued by the local authority in whose area a scrap metal site is situated and will require all of the sites at which the licensee carries on the business as a scrap metal dealer within the local authority area to be identified and a site manager to be named for each site. In doing so, they will be permitted to operate from those sites as a scrap metal dealer, including transporting scrap metal to and from those sites from any local authority area.

2.1 A mobile collector's licence will authorise the licensee to operate as a mobile collector in the area of the issuing local authority, permitting them to collect any scrap metal as appropriate. This includes commercial as well as domestic scrap metal. The licence does not permit the collector to collect from any other local authority area; a separate licence would need to be obtained from each local authority in whose area the individual wished to collect in. A licence also does not authorise the licensee to carry on a business at a site within any area - should a collector wish to use a fixed site, they would need to obtain a site licence from the relevant local authority. There is no restriction as to the location where the collector can transport and sell their metals.

2.2 A licence will be issued for a period of three years from the date of issue. The Secretary of State will have the power under paragraph 1(4) of the Act to alter the duration of the licence.

- 2.3 Section 3 requires that the licensing authority has to be satisfied that an applicant is a suitable person to carry on business as a scrap metal dealer. In considering suitability, the local authority may have regard to any relevant information, including whether any relevant enforcement action has been taken against the applicant or whether the applicant has been convicted of a relevant offence. The Secretary of State has a power to prescribe in regulations the meaning of relevant offence and relevant enforcement action. It is intended that this will be in line with the criteria used by the Environment Agency when issuing environmental permits under the Environmental Protection Act 1990. The authority must also have regard to any guidance on determining suitability which will be issued from time to time by the Secretary of State, and the authority may consult with other organisations to assist in determining suitability.
- 2.4 Section 3 also allows local authorities, when issuing a licence, to include conditions on it if the licensee or site manager has been convicted of a relevant offence. Subsection (8) specifies the two conditions that can be imposed by local authorities on a licence, namely:
- (a) That the dealer must not receive scrap metal except between 9 a.m. and 5 p.m. on any day;
  - (b) That all scrap metal received must be kept in the form in which it is received for a specified period, not exceeding 72 hours, beginning with the time when it is received.
- 2.5 Section 4 provides the licensing authority with the discretion to revoke a licence on particular grounds, including where the local authority is no longer satisfied that the licensee is a suitable person to carry on the business as a scrap metal dealer. The revocation of a licence can only be carried out by a local authority as the licensing authority.
- 2.6 Section 4 also allows the licensing authority to vary a licence, imposing the conditions stipulated in 2.9 above, if the licensee or a site manager is convicted of a relevant offence.
- 2.7 If the licensing authority proposes to refuse an application for the grant or variation of a licence, or intends to revoke a licence, it must give the applicant or licensee a notice which sets out what the authority proposes to do and the reasons for it. The notice must state that the applicant may make representations against any of these decisions within 14 days.
- 2.8 Section 6 places a duty on the local authority to supply any such information as requested relating to a scrap metal licence to any other local authority in England and Wales, the Environment Agency, the Natural Resources Body for Wales and to police forces.
- 2.9 Section 7 requires that a register of licences issued under the Act should be maintained by the Environment Agency in England and the Natural Resources Body for Wales in Wales. Local authorities will provide the appropriate

information on all licences issued in their geographic areas in order that this register can be updated regularly. The register will be made openly accessible to the public and will include: the name of the authority which issued the licence; the name of the licensee; any trading name; the type of licence; the site(s) covered by the licence and the expiry date of the licence.

- 2.10 Section 10 requires that the licensee display a copy of their licence. For site operators this must be in a prominent place in an area accessible to the public. For mobile collectors, it must be in a manner which enables the licence to be easily read by a person outside the vehicle. A criminal offence is committed by any scrap metal dealer who fails to fulfil these requirements. This offence is punishable on summary conviction with a fine not exceeding level 3 on the standard scale (£1,000).
- 2.11 Section 11 places a requirement on scrap metal dealers, site managers and employees who have been delegated the responsibility to do so, to verify the identity of the person they are receiving metal from and the person's address. This verification must be done by reference to data, documents or other information obtained from a reliable or independent source, such as the Identity and Passport Service, the Driver and Vehicle Licensing Agency, a bank or utility company etc. The Secretary of State will prescribe in regulations the data or documents which are sufficient or not sufficient as the case may be, for verifying identity.
- 2.12 It will be an offence not to obtain and verify the seller's identity, punishable by a fine not exceeding level 3 on the standard scale (£1,000). The offence will apply to the scrap metal dealer, the site manager and any person, who under arrangements made by either the scrap metal dealer or the site manager, has responsibility for fulfilling this requirement on behalf of the business.
- 2.13 Section 13 sets out the record-keeping requirements in respect of any scrap metal received by a scrap metal dealer in the course of their business. Information that is required to be recorded includes the type of metal being purchased; the time/date of the transaction; personal information on the seller; who is acting on behalf of the dealer and proof of the non-cash transaction. Failure to comply with the requirements of this section is an offence attracting a penalty up to level 5 (£5,000) on the standard scale.

### **3.0 Implementation timetable**

- 3.1 The Home Office has released the following implementation timetable:
- The main provisions of the Act commence on 1<sup>st</sup> October 2013 including the offence of buying scrap metal for cash.
  - Dealers and motor salvage operators registered immediately before 1<sup>st</sup> October 2013 will be deemed to have a licence under the Act from 1<sup>st</sup> October 2013.
  - Provided the dealer submits an application for a licence on or before 15<sup>th</sup> October 2013 their deemed licence will last until the council either issues them with a licence or gives them notice of the decision to refuse them a

licence, although they will be able to continue trading pending an appeal against the decision not to grant a licence.

- Where a dealer submits an application on or before 15<sup>th</sup> October 2013 but does not supply all the required information with the application form then the deemed licence remains in effect after 15<sup>th</sup> October 2013.
- Where a dealer with a deemed licence fails to submit an application on or before 15<sup>th</sup> October 2013 the deemed licence will lapse on 16<sup>th</sup> October 2013.
- Other scrap metal dealers, not previously registered, will be able to apply for a licence from 1<sup>st</sup> October 2013 but will have to wait until a licence is granted before they can legally trade.
- Local authorities will complete suitability checks on applicants and decide whether to issue licences. We recommend that decisions on whether to grant or refuse a licence to previously registered dealers are made before 1<sup>st</sup> December 2013.
- All other enforcement provisions within the Act commence on 1<sup>st</sup> December 2013.

3.2 The Council therefore needs to be in a position to take applications (and to charge a fee for applications) from 1<sup>st</sup> October 2013.

#### **4.0 Proposed delegations**

4.1 It is requested that the relevant amendments to Breckland Council's Constitution be made by the addition of the following:

The relevant Committee to hear representations and the determine applications for a licence of a Scrap Metal Dealer under the Scrap Metal Dealers Act 2013 where the Director of Commissioning proposes to refuse or to cancel a licence or to vary a licence under section 4 of the Act and the applicant has correctly given notice that they require the opportunity to make representations about that proposal.

4.2 It is also requested that the relevant amendments to the Breckland Council Constitution be made to delegate the following to officers from the Director of Commissioning:

To licence, renew or vary a licence, of a Scrap Metal Dealer under the Scrap Metal Dealers Act 2013 where there is no intention to refuse.

To serve Notice of the proposal to refuse or cancel a licence of a Scrap Metal Dealer under the Scrap Metal Dealers Act 2013.

To serve Notice of the proposal to vary a licence of a Scrap Metal Dealer under section 4 of the Scrap Metal Dealers Act 2013.

The determination of applications for a licence of a Scrap Metal Dealer, under the Scrap Metal Dealers Act 2013 where it is the intention to refuse or cancel a licence or to vary a licence under section 4 of the Act, where the applicant has not served notice requiring the opportunity to make representations to the

authority in respect of the proposal to refuse or cancel a licence, or to impose conditions on a licence.

## **5.0 Proposed Licence fees**

5.1 The Act provides that an application for a licence must be accompanied by a fee. The fee will be set locally by each local authority on a cost recovery basis, but local authorities will have a duty to have regard to guidance issued by the Secretary of State which outlines the issues that should be considered by them when setting the fee and what activities the fee can cover.

5.2 The guidance states .....‘The power to set fees has been passed to individual local authorities, so that any fees levied in each local area is set by reference to the actual costs to each authority. The EU services directive states that a licence fee can only be used to pay for the cost associated with the licensing process. In effect, each local authority must ensure that the income from fees charged for each service does not exceed the costs of providing the service.

Local authorities should specify fees for each category of application. Specifically we would expect a fee to be specified for the assessment of an application for a licence, the assessment of an application to vary a licence, and the assessment of an application for licence renewal.

Local authorities should specify fees which are payable by licence applicants for the assessment and administration activity within the new licensing regime brought about by the 2013 Act. They should do this by identifying what they need to do to assess the type of licence in question and calculating their best estimate of the cost to be incurred by the LA. The authority will then be able to calculate a best estimate of unit cost for each case.

In effect, the costs of a licence should reflect the time spent assessing and administering applications, processing them, having experienced licensing officers review them, storing them, consulting on the suitability of an applicant, reviewing relevant offences, the decision on whether to issue a licence, as well as the cost of issuing licences in a format that can be displayed. Consulting the local authority’s enforcement records in order to determine the suitability of the applicant is chargeable within the licence fee costs as are costs associated with contested licence applications’.....

5.3 In particular this guidance indicates that in calculating their fees councils will want to take into account the following:

- All the activity required with processing and granting a licence such as considering applications and assessing the suitability of the applicant.
- The costs of staff associated with supporting the service.
- Support provided by other parts of the council to the licensing team such as legal services and any recharges there might be for rooms, heating and lighting from the centre of the authority.
- The cost of providing advice and guidance to applicants on what will be a new process.

- Carrying out inspections and ensuring compliance with the law.
- Costs associated with consulting other agencies and bodies when considering if an applicant is a suitable person.
- Working with any partners in ensuring compliance.
- Issuing the licence.
- Any officer time spent providing information for inclusion in the register of dealers.

5.4 An important point arising out of the recent Hemming v. Westminster case is that the fees cannot be used to pay for enforcement action against unlicensed dealers (particularly collectors) and these have not been included in these calculations.

5.5 It is therefore proposed that the following fees be charged in respect of this new process:

Application for a new scrap metal site licence	£317.43
Application for a new scrap metal collectors licence	£222.98
Application to renew scrap metal site licence	£219.68
Application to renew scrap metal collectors licence	£106.98
Application to vary scrap metal licence change of licensee details	£57.53
Application to vary scrap metal licence change of licensed site	£60.66
Application to vary scrap metal licence change of site manager	£39.23
Application to vary scrap metal licence site to collectors licence	£58.71
Application to vary scrap metal licence collectors to site licence	£188.37
Application for a copy licence	£14.68

## 6.0 OPTIONS

6.1 Members may

- Authorise the proposed amendments to the Breckland Council Constitution and approve the proposed fees in relation to the Scrap Metal Dealers Act 2013; or
- Request further information on the proposed matters.

## 7.0 REASONS FOR RECOMMENDATION(S)

7.1 It is recommended that the amendments and fees are authorised in order to meet the legislative requirements.

## 8.0 EXPECTED BENEFITS AND TIMELINES

8.1 Breckland Council must be in a position to accept and process applications under the Scrap Metal Act 2013 by 1<sup>st</sup> October 2013.

## 9.0 IMPLICATIONS

9.1 **Carbon Footprint & Environmental Issues (n/a)**

## 9.2 **Constitution & Legal**

9.2.1 Amendments to the Constitution are included in the report. Decisions made under the Act are subject to appeal to the Magistrates Court.

## 9.3 **Contracts (n/a)**

## 9.4 **Crime and Disorder (n/a)**

## 9.5 **Equality and Diversity & Human Rights (n/a)**

## 9.6 **Financial**

9.6.1 Finance have been consulted regarding the proposed fees.

## 9.7 **Risk Management (n/a)**

## 9.8 **Staffing (n/a)**

## 9.9 **Stakeholders / Consultation**

9.9.1 Due to the short timescale no consultation has been possible.

## 9.10 **Other (n/a)**

## 10.0 **WARDS/COMMUNITIES AFFECTED**

10.0.1 All

---

Background papers:-

Tackling Metal Theft – a councillor’s handbook (Local Government Association, July 2013)

---

**Lead Contact Officer** Tiffany Bentley  
Name/Post: Licensing Officer  
Telephone Number: 01362 656396  
Email: [tiffany.bentley@breckland.gov.uk](mailto:tiffany.bentley@breckland.gov.uk)

### **Key Decision:**

Yes

### **Exempt Decision:**

No

### **Appendices attached to this report:**

None